

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DANIEL E. GALESKI, Personal Representative of  
the Estate of BARBARA L. HALL, Deceased,

UNPUBLISHED  
December 1, 2005

Plaintiff-Appellee,

v

No. 260878  
Wayne Circuit Court  
LC No. 03-341464-NI

MARK WAJDA and HELEN WAJDA,

Defendants,

ON RECONSIDERATION

and

JUDY STEMPIEN,

Intervening Plaintiff-Appellant.

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Before: Zahra, P.J., and Cavanagh and Owens, JJ.

CAVANAGH, J. (*dissenting*).

I respectfully dissent from the majority opinion. I agree with the trial court that Stempien is not entitled to claim damages under MCL 600.2922 in this wrongful death action filed on behalf of her stepmother. Therefore, I would affirm.

Under MCL 600.2922(3), persons who may be entitled to damages in a wrongful death action include

any of the following who suffer damages and survive the deceased:

(a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.

(b) The children of the deceased's spouse.

On appeal, Stempien claims that William was "the deceased's spouse" within the contemplation of MCL 600.2922(3)(b). But, if William is considered "the deceased's spouse" for purposes of MCL 600.2922(3)(b), he must also be considered "the deceased's spouse" under

MCL 600.2922(3)(a). William cannot be deemed the “the deceased’s spouse” for purposes of one provision of the statute and not another provision of the same statute. See *Twichel v MIC General Ins Corp*, 469 Mich 524, 531; 676 NW2d 616 (2004). It is undisputed that William died simultaneously with Barbara. Therefore he did not “survive the deceased,” MCL 600.2922(3), and cannot be considered “the deceased’s spouse” for purposes of MCL 600.2922(3)(a). If William is not “the deceased’s spouse” for purposes of MCL 600.2922(3)(a), Stempien is not a child of “the deceased’s spouse” for purposes of MCL 600.2922(3)(b).

I agree with the majority that under the wrongful death act a cause of action accrues to the decedent at the time the fatal injury was inflicted. But, the cause of action vests for the benefit of the survivors only at the death of their decedent. Thus, the relevant time period in which to determine who the statutory beneficiaries may be is at the time of the decedent’s death. So even if William could be considered “the deceased’s spouse” at the time Barbara suffered her fatal injuries, he was not her spouse for purposes of MCL 600.2922(3) at the time the cause of action vested because he died at the same time. The marriage legally terminated upon their simultaneous deaths. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997).

In sum, William is not “the deceased’s spouse” for purposes of MCL 600.2922(3) and Stempien is not entitled to claim a share of the wrongful death damages under MCL 600.2922(3)(b). I would affirm.

/s/ Mark J. Cavanagh